

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

VICTOR ALAN ROSS,

Civil File No. 08-1183 (JNE/SRN)

Plaintiff,

v.

REPORT AND RECOMMENDATION

DEPARTMENT OF VETERANS AFFAIRS,

Defendant.

Plaintiff commenced this action on April 30, 2008, by filing a self-styled complaint, and an application seeking leave to proceed in forma pauperis, ("IFP"). (Docket Nos. 1 and 2.) The Court previously examined Plaintiff's submissions, and determined that his complaint failed to state an actionable claim for relief. Therefore, in an order dated May 5, 2008, (Docket No. 4), the Court informed Plaintiff that his IFP Application would "not be granted at this time." That order gave Plaintiff an opportunity to file an amended complaint, and expressly advised him that if he did not file a new pleading by May 30, 2008, the Court would recommend that this action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b).

Plaintiff subsequently indicated that he was still interested in pursuing this action, and that he was attempting to retain counsel to represent him. Therefore, the Court entered a second order on June 4, 2008, (Docket No. 5), which extended the deadline for filing an amended complaint to June 30, 2008. That new order clearly reiterated that if Plaintiff failed to file a new pleading by the extended deadline, the Court would recommend that this action be summarily dismissed.

The extended deadline for filing an amended complaint expired more than a month ago, and Plaintiff still has not complied with the Court's prior orders. It has now been three months since Plaintiff initiated this action, and he still has not filed a viable pleading, nor has he offered any excuse for his failure to do so. Therefore, the Court will now recommend, in accordance with the two prior orders that have been entered in this matter, that this action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b). See Henderson v. Renaissance Grand Hotel, 267 Fed.Appx. 496, 497 (8th Cir. 2008) (unpublished opinion) ("[a] district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order"); see also Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962) (recognizing that a federal court has the inherent authority to "manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases").

Based upon the above, and upon all the records and proceedings herein,

IT IS HEREBY RECOMMENDED that:

1. Plaintiff's Application To Proceed In Forma Pauperis, (Docket No. 2), be **DENIED**;

and

2. This action be **DISMISSED WITHOUT PREJUDICE**.

Dated: July 30, 2008

s/ Susan Richard Nelson
SUSAN RICHARD NELSON
United States Magistrate Judge

Under D. Minn. LR 72.2(b) any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by August 14, 2008 a writing which specifically identifies those portions of this Report to which objections are made and the basis of those objections. Failure to comply with this procedure may operate as a forfeiture

of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable to the Circuit Court of Appeals.